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completion of facility equipment testing, or the date when all approved permits required for facility construction are received.

Deciding Official means the Manager of the Golden Field Office of the Department of Energy (or any DOE official to whom the authority of the Manager of the Golden Field Office may be redelegated by the Secretary of Energy).

DOE means the Department of Energy.

Finance Office means the DOE Office of the Chief Financial Officer (or any office to which that Office's authority may be redelegated by the Secretary of Energy).

Fiscal year means the Federal fiscal year beginning October 1 and ending on September 30 of the following calendar year.

Indian tribal government means the governing body of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Native corporation has the meaning set forth in the Alaska Native Claims Settlement Act (25 U.S.C. 1602).

Net electric energy means the metered kilowatt-hours (kWh) generated and sold, and excludes electric energy used within the renewable energy facility to power equipment such as pumps, motors, controls, lighting, heating, cooling, and other systems needed to operate the facility.

Not-for-profit electrical cooperative means a cooperative association that is legally obligated to operate on a not-for-profit basis and is organized under the laws of any State for the purpose of providing electric service to its members.

Ocean means the waters of the Atlantic Ocean (including the Gulf of Mexico) and the Pacific Ocean within the jurisdiction of the United States from which energy may be derived through application of tides, waves, currents, thermal differences, or other means.

Renewable energy facility means a single module or unit, or an aggregation of such units, that generates electric energy which is independently metered and which results from the utilization of a renewable energy source.

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Renewable energy source means solar heat, solar light, wind, ocean, geothermal heat, and biomass, except for—

(1) Heat from the burning of municipal solid waste; or

(2) Heat from a dry steam geothermal reservoir which—

(i) Has no mobile liquid in its natural state;

(ii) Is a fluid composed of at least 95 percent water vapor; and

(iii) Has an enthalpy for the total produced fluid greater than or equal to 2.791 megajoules per kilogram (1200 British thermal units per pound).

State means the District of Columbia, Puerto Rico, and any of the States, Commonwealths, territories, and possessions of the United States.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46386, Aug. 14, 2006]

§451.3 Who may apply.

Any owner, or operator with the written consent of the owner, but not both, of a qualified renewable energy facility, may apply for incentive payments for net electric energy generated from a renewable energy source and sold.

§451.4 What is a qualified renewable energy facility.

In order to qualify for an incentive payment under this part, a renewable energy facility must meet the following qualifications—

(a) *Owner qualifications.* The owner must be—

(1) A State or a political subdivision of a State (or agency, authority, or instrumentality thereof);

(2) A public utility described in section 115 of the Internal Revenue Code of 1986;

(3) A not-for-profit electrical cooperative;

(4) An Indian tribal government or subdivision thereof; or

(5) A Native corporation.

(b) *What constitutes ownership.* The owner must have all rights to the beneficial use of the renewable energy facility, and legal title must be held by, or for the benefit of, the owner.

(c) *Sales affecting interstate commerce.* The net electric energy generated by the renewable energy facility must be

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sold to another entity for consideration.

(d) *Type of renewable energy sources.* The source of the electric energy for which an incentive payment is sought must be a renewable energy source, as defined in §451.2.

(e) *Time of first use.* The date of the first use of a newly constructed renewable energy facility, or a facility covered by paragraph (f) of this section, must occur during the inclusive period beginning October 1, 1993, and ending on September 30, 2016. For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2004, the time of first use shall be deemed to be October 1, 2004.

(f) *Conversion of non-qualified facilities.* Existing non-qualified facilities that are converted must meet either of the following criteria—

(1) A facility employing solar, wind ocean, geothermal or biomass sources must be refurbished during the allowed time of first use such that the fair market value of any previously used property does not exceed 20% of the facility's total value.

(2) A facility not employing solar, wind ocean, geothermal or biomass sources must be converted in part or in whole to a qualified facility during the allowed time of first use.

(g) *Location.* The qualified renewable energy facility must be located in a State or in U.S. jurisdictional waters.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46386, Aug. 14, 2006]

§451.5 Where and when to apply.

(a) *Pre-application and notification.* (1) An applicant may submit at any time a pre-application, containing the information described in §451.8 (a) through (e), to obtain a preliminary and conditional determination of eligibility.

(2) To assist DOE in its budget planning, the owner or operator of a qualified renewable energy facility is requested to provide notification at least 6 months in advance of when a facility is expected to be first used, providing projected information specified in §451.8 (a) through (e).

(b) *Application.* (1) An application for an incentive payment for electric energy generated and sold in a fiscal year must be filed during the first quarter

(October 1 through December 31) of the next fiscal year, except as provided in paragraph (b)(2) of this section.

(2) For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2005, applications for incentive payments for electric energy generated and sold in fiscal year 2005 must be filed by August 31, 2006.

(3) Failure to file an application in any fiscal year for payment for energy generated in the preceding fiscal year shall disqualify the owner or operator from eligibility for any incentive payment for energy generated in that preceding fiscal year.

(c) *Where.* Applications and notifications to the Department shall be submitted to the Renewable Energy Production Incentive Program, U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO, 80401.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46387, Aug. 14, 2006]

§451.6 Duration of incentive payments.

Subject to the availability of appropriated funds, DOE shall make incentive payments under this part with respect to a qualified renewable energy facility for 10 consecutive fiscal years. Such period shall begin with the fiscal year in which application for payment for electricity generated by the facility is first made and the facility is determined by DOE to be eligible for receipt of an incentive payment. The period for payment under this program ends with fiscal year 2026.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46387, Aug. 14, 2006]

§451.7 Metering requirements.

The net electric energy generated and sold (kilowatt-hours) by the owner or operator of a qualified renewable energy facility must be measured by a standard metering device that—

(a) Meets generally accepted industry standards;

(b) Is maintained in proper working order according to the instructions of its manufacturer; and

(c) Is calibrated according to generally accepted industry standards.